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Supreme Court of the United States

OCTOBER TERM, 1958

No. 140

STANLEY G. EARLE,
Petitioner,

against

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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Supreme Court of the United States

OCTOBER TERM, 1958.

STANLEY G. EARLE, *Petitioner,* *against* UNITED STATES OF AMERICA, *Respondent.*	No.

STANLEY G. EARLE, your Petitioner, prays that a Writ of Certiorari issue to review the decision of the United States Court of Appeals for the Second Circuit, rendered in the above-entitled case on April 21, 1958.

Opinions Below

The opinion of the United States District Court for the Eastern District of New York (infra, Appendix) is reported at 148 Fed. Sup. 822, 152 Fed. Sup. 554.

The opinion of the Court of Appeals (infra, Appendix) was rendered April 21, 1958, and has not yet been officially reported.

Jurisdiction

Jurisdiction to issue the writ rests on Title 28 U. S. C. § 1254(1).

Questions Presented

1. Has the Immigration and Naturalization Service exceeded the statutory authority given to it by § 214 of the Immigration and Nationality Act of 1952 (Title 8 U. S. C. § 1184(a)) by inserting in a departure bond required of an alien temporarily in the United States, a provision that the bond shall be deemed breached upon a failure of compliance by the alien with the conditions of his status or admission?

2. Is that portion of § 214.3, Title 8 C. F. R., which provides that the Immigration and Naturalization Service may exact a bond to insure that an alien will maintain the conditions of the status under which he was admitted or which he may subsequently acquire, valid and enforceable?

3. Does the Attorney-General, or the Immigration and Naturalization Service acting for him, have the authority under § 214 of the Immigration and Nationality Act of 1952 (Section 1184(a) Title 8, U. S. C.), to exact any bond of an alien temporarily in the United States other than a departure bond?

4. Has the United States of America sustained any damages warranting the retention of the proceeds of an alien bond as liquidated damages; when the alien has departed from the United States at his own expense prior to the satisfactory departure date fixed by the Immigration and Naturalization Service?

Statutes and Regulations Involved

The basic question sought to be determined by this petition is, an interpretation of 8 U. S. C. 1184(a) (Section 214, Immigration and Nationality Act of 1952) which reads as follows:

> "The admission to the United States of any alien as a non-immigrant shall be for such time and under such conditions as the Attorney General may by regulations prescribe, including when he deems necessary the giving of a bond with sufficient surety in such sum and containing such conditions as the Attorney General shall prescribe, to insure that at the expiration of such time or upon failure to maintain the status under which he was admitted, or to maintain any status subsequently acquired under section 1258 of this title, such alien will depart from the United States."

In connection with the foregoing Statute, the Court below has based its interpretation on an enlargement of

8 U. S. C. 1103(a), the appropriate portion of which reads as follows:

> "He shall establish such regulations; prescribe such forms of bond, reports, entries, and other papers; issue such instructions; and perform such other acts as he deems necessary for carrying out his authority under the provisions of this chapter."

The point of dispute between the parties herein actually revolves about the validity under the foregoing Statutes of § 214.3 of Title 8 of the Code of Federal Regulations, which reads in full:

> "§ 214.3. Bonds. Except as may be otherwise specifically provided by the Immigration and Nationality Act and by any provisions of this chapter relating to particular classes of nonimmigrants, in the discretion of the district director or the officer in charge having administrative jurisdiction over the port of entry or the special inquiry officer, or, pursuant to an order entered on appeal from the decision of a special inquiry officer, an alien applying for admission to the United States as a nonimmigrant may be required to post a bond in the sum of not less than $500 as a condition precedent to his admission to the United States to insure that he will depart from the United States at the expiration of the time for which he is admitted and that he will maintain the status under which he is admitted or which he may subsequently acquire under the Immigration and Nationality Act; PROVIDED, That no such bond shall be required as a condition to the admission of any alien within the classes described in section 102 of the Immigration and Nationality Act. Bond shall be furnished on such form as is prescribed for the particular nonimmigrant classification under which the alien seeks to enter the United States."

Statement of the Case

The material facts involved in this case are not disputed, the parties having stipulated to an agreed statement of fact which was submitted to the United States District

Court, Eastern District of New York, and upon which the District Court opinions set forth in the Appendix herein, were based.

This is an action by Petitioner to recover the proceeds of a $500 United States Treasury bond posted by him in connection with an application for an extension of stay by an alien visitor, URCELLA SIBBLIES, with the Immigration and Naturalization Service, United States Department of Justice.

On May 28, 1953, Petitioner posted a bond in the sum of $500 on behalf of the aforesaid alien, who had been admitted to the United States on June 8, 1952, at Miami, Florida, pursuant to the provisions of § 3(2) of the Immigration Act of 1924, as a visitor for pleasure, and medical treatment.

Subsequently, the alien, on three separate occasions, applied for, and received from, the Immigration and Naturalization Service (hereinafter also referred to as the "SERVICE") extensions of the validity of her stay in the United States—the first to June 8, 1953; the second to December 8, 1953; the third and final one to March 8, 1954.

The Service, as a condition for the granting of the second extension hereinabove mentioned, exacted of the alien a bond in the principal sum of $500, conditioned upon her departure from the United States within the time allotted to her and, in addition, upon her compliance with the conditions of her admission into the United States.

The petitioner, a relative of the alien, executed an agreement on a form prepared by the Service, entitled: "BOND CONDITIONED FOR DEPARTURE OF AN ALIEN TEMPORARILY ADMITTED AS A VISITOR FOR BUSINESS OR PLEASURE." It contained, among other things, the following pertinent conditions, out of which the instant suit arose:

> "NOW, THEREFORE, the conditions of this bond are such that if the said alien is permitted to remain temporarily as a visitor for business or pleasure (or is granted an extension of the period of her admis-

sion for such purpose or purposes), and if the said alien shall in all respects comply with the conditions of her admission (or of the extension of the period of her admission) and shall actually depart permanently from the United States without expense thereto in any event on or before December 8, 1953, or such subsequent date as may be (sic) proper order be fixed in extension of such date and if the immigration officer in charge of the port of Miami and New York shall receive from the above-bounden obligors satisfactory evidence of the time and place of such departure prior to the expiration of thirty (30) days from the date of such departure; then this obligation shall be void; otherwise it shall remain in full force and virtue."

Upon the furnishing of the said bond, the alien was granted permission to remain in the United States as a nonimmigrant visitor until December 8, 1953. Thereafter, an additional extension of time to remain in the United States until March 8, 1954, was granted to her by the Service.

On January 19, 1954, the alien, in a voluntary statement made under oath to an officer of the Service, admitted that on or about December 4, 1953, she had obtained employment in the State of New Jersey. On the date of the said statement, an Immigration warrant of arrest was issued, charging her with violation of § 241(a) (9) of the Immigration and Nationality Act of 1952, in that she had failed to comply with the conditions of her status as a visitor by accepting employment. The alien waived all further proceedings on that date and the Service granted to her the privilege of voluntary departure from the United States, to be effected without cost to the Government, such departure to take place not later than January 30, 1954.

The alien departed from the United States at her own expense, on January 29, 1954, in compliance with her agreement of voluntary departure with the Service. This departure was six weeks prior to the date to which her stay in the United States had been last extended, to-wit: March 8, 1954.

The Service thereafter informed the Petitioner that it considered the bond deposited by him on May 28, 1953, to have been breached by the act of the alien in becoming employed in the United States.

Due demand has been made by the Petitioner for the cancellation of this bond and the return of the security posted thereunder, which the Respondent has refused to do.

This action was, thereupon, instituted pursuant to Title 28 U. S. C. § 1346.

Reasons for allowing the Writ

1. The Court of Appeals erred in its interpretation of the statutory authority given to the Attorney-General to exact alien bonds.

Section 214 of the Immigration and Nationality Act of 1952 (Title 8 U. S. C. § 1184(a)) clearly and unequivocally grants to the Attorney-General, or the Immigration and Naturalization Service acting for him, certain limited powers to demand and receive a bond "to insure that at the expiration of such time, or upon the failure to maintain the status under which he was admitted, or to maintain any such status subsequently acquired under § 1258 of this Title, such alien will depart from the United States."

Nowhere in this section is the Attorney-General, or the Service, given the right or the power to exact a bond for any purpose other than to assure departure of an alien from the United States, which departure may be occasioned by any one of a number of enumerated contingencies. Nothing in this section gives the authority to insert in such departure bond, provision for breach thereof if an alien fails to maintain his status while in the United States.

The Congress of the United States obviously considered the possibility of an alien failing to maintain his status even after admission under bond, but saw fit, nevertheless, to grant to the Attorney-General only the right to demand a departure bond, and merely conferred upon him the right

or power to accelerate the date of the alien's departure because of failure to maintain the conditions of status of admission. To construe § 214 (*supra*) otherwise, clearly negates legislative mandate and intention.

The Court of Appeals read the foregoing § 214 together with § 1103(a), Title 8, U. S. C., in arriving at its conclusion. This section, reads:

> "He (Attorney-General) shall establish such regulations; prescribe such forms of bond, reports, entries; and other papers; issue such instructions; and perform such other acts as he deems necessary for carrying out his authority under the provisions of this chapter."

This last-quoted section grants to the Attorney-General the power to prescribe only the forms of bond for carrying out the mandate of Congress. Nothing in this section authorizes the Attorney-General, or the Service, to determine the essential purposes of the bond. This has been admittedly provided for by Congress in the above cited Section 1184(a) of Title 8, U. S. C., which defines the type of bond that may be required.

To hold that Section 1103(a), Title 8, U. S. C. (*supra*) gives to the Attorney-General unlimited or practically unlimited powers to fix the conditions of an alien bond, completely negates the provisions of § 1184(a) Title 8, U. S. C. (*supra*) which define the type of bond which may be required, and makes the latter Section superfluous, meaningless and contradictory.

It is respectfully submitted by the Petitioner, that the provisions of § 214.3, Title 8, Code of Federal Regulations, promulgated by the Attorney-General purportedly under the power granted to him by § 214 of the Immigration and Nationality Act, (which is the above-discussed Section 1184(a), Title 8, U. S. C.), are invalid since the Attorney-General has exceeded the statutory authority granted to him by that section. In the instant case, the terms of the bond were contained therein under the alleged authority of

the aforesaid regulation. The Court of Appeals, in holding that the said regulation is "well within the power granted in either of the above Sections" (Sec. 1103(a) and § 1184(a), Title 8, U. S. C.) cited no authority in support of such conclusion. The Court of Appeals merely stated that the lower Court, which found for the petitioner, had construed § 214 too narrowly, particularly when read together with § 1103(a). The Court of Appeals reached the conclusion without foundation, that "because the power to demand a bond to insure timely departure is expressly given by Statute does not preclude the exaction of a bond conditioned upon maintenance of status."

The Court of Appeals used as its sole authority in determining that the Attorney-General had broad authority to exact the bond in question, the case of *United States* v. *Wolper*, 2d Cir. 86 F. 2d 715, and cases cited therein. A reading of this cited case makes it readily apparent that it has no application to the instant case whatsoever, since, in that case the question was whether or not a bond furnished to a tax collector to postpone collection of a tax and threat of distraint was void for an illegal consideration. Moreover, in the *Wolper* case, there was no statute involved which specifically set forth the nature of the bond which could be exacted by the Commissioner or by the Collector. It is conceded, that if in the instant case, § 1184(a) had been omitted by Congress when it enacted the Immigration and Nationality Act of 1952, the Attorney-General would have power to exact bonds of nearly any reasonable description. Petitioner contends, however, that because of the fact that § 1184(a) defines the nature of such bond, the Attorney-General is limited and restricted thereby.

The pertinent portion of the *Wolper* case and the cases cited therein, relied upon by Respondent and apparently by the Court of Appeals, is the dictum that the inherent power of an administrative agency to obtain a bond must not be in violation of law, must not run contrary to any Statute, and must not be *malum prohibitum* nor *malum in se*.

2. The Court of Appeals erred in its finding that the Respondent was entitled to retain the proceeds of the bond, as liquidated damages.

The Court of Appeals, in its opinion, stated that the bond which provides for liquidated damages, is particularly appropriate under the facts, to compensate for the indirect damage done to the National economy, the expense of investigation, and the maintenance of an agency to enforce the provisions of the Immigration Laws, and cites, in support of its conclusion, *United States* vs. *Goldberg,* 2d Cir. 40 F. 2d 406.

The *Goldberg* case is clearly distinguishable from the instant case in that therein the only question, involved a departure bond furnished by the alien, who subsequently failed to depart by the date fixed by the Immigration authorities. In that case, as a matter of fact, the only reference to liquidated damages is a citation of *Matta* v. *Tillinghast*, 33 F. 2d 64. This latter-cited case similarly dealt with the failure of an alien to depart by a specified date and, in that case, the question of damages was not even discussed by the Court, the only issue decided therein being when the liability under the bond became fixed.

In the instant case, it is respectfully submitted that even if the bond were a valid bond, obtained under a valid regulation, the Government has sustained no damages entitling it to the proceeds of the bond as liquidated damages.

The bond was drawn on a form supplied by the Respondent, and was carefully prepared so as to avoid any imputation that it provided for a penalty. It may very well be true that the said bond could have lawfully provided for a penalty instead of liquidated damages. (See *Illinois Surety* v. *United States*, 2d Circuit, 229 Fed. 527.)

In the instant case, all that the petitioner agreed to do was to pay the sum of Five Hundred Dollars ($500.00) to the Service as liquidated damages should it suffer any financial loss in effectuating the departure of the alien from the United States. The provision for liquidated damages did

not more than fix the amount of such expense at an agreed sum. It did not make damages recoverable if none at all could have been suffered (*U. S. of America* v. *Manufacturers Casualty Insurance Company*, 113 F. Supp. 402, 1953).

In the latter case, Judge DIMOCK, in the District Court for the Southern District of New York, in finding for the defendant in an action on a bond, ruled that plaintiff may not recover where it suffered no monetary loss. The Court stated:

> "The provision for liquidated damages did not more than fix the amount of such expense at an agreed figure. It did not make damages recoverable even if none could be suffered."

In the instant case, upon the Agreed Statement of Facts, it has been conceded that the alien, URCELLA SIBBLIES, duly departed from the United States voluntarily at her own expense, without an order of deportation, weeks prior to the date her last extension of time terminated, and also within the time allotted to her under the agreement for voluntary departure. The Service sustained no loss or expense whatever in effecting her departure from the United States. Thus the intent of the statute, relating to the posting of a bond (Section 1184, Title 8, U. S. Code, supra) to assure the overnment against loss to it because of a failure of an alien to depart from the United States at his own cost and expense, was fully carried out.

On the basis of the foregoing, it is respectfully submitted that the writ herein should be allowed.

Respectfully submitted,

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APPENDIX

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 188—October Term, 1957.

(Argued March 10, 1958 Decided April 21, 1958.)

Docket No. 24754.

STANLEY G. EARLE,

Plaintiff-Appellee,

—against—

UNITED STATES OF AMERICA,

Defendant-Appellant.

Before:

CLARK, *Chief Judge,*

HINCKS, *Circuit Judge* and BRENNAN, *District Judge.*

Appeal from a judgment of the United States District Court for the Eastern District of New York, Leo F. Rayfiel, *Judge,* in favor of the plaintiff in an amount representing the proceeds of a United States Treasury bond, deposited as security for a bond posted with the United States Director of Immigration at New York (148 F. Supp. 822; 152 F. Supp. 554). Reversed.

SPAR, SCHLEN & BURROUGHS (Charles Spar, of Counsel), New York City, *for plaintiff-appellee.*

CORNELIUS W. WICKERSHAM, JR., United States Attorney, Eastern District of New York (Robert A. Morse, Assistant United States Attorney, of Counsel), *for defendant-appellant.*

BRENNAN, *District Judge*:

This litigation involves the legality and enforceability of a bond posted with the District Director of the Immigration and Naturalization Service, United States Department of Justice, hereinafter referred to as the Service. The issues were submitted upon a stipulated statement of facts. The court below concluded that the bond here may not be forfeited although the alien violated the maintenance of status condition thereof.

Urcella Sibblies, an alien, was admitted to the United States, as a visitor for pleasure and medical treatment, on June 8, 1952 for a period of six months, pursuant to the provisions of Sec. 3(2) of the Immigration Act of 1924. She applied for and received three extensions of her temporary stay in this country. The first of said extensions permitted her to remain until June 8, 1953; the second until December 8, 1953 and the third until March 8, 1954. As a condition precedent to her obtaining the second extension of time beyond June 8, 1953, the Service required her to post with it a bond in the principal sum of $500.00. On May 28, 1953, the plaintiff executed and posted an undertaking on a form prepared by the Service and entitled "Bond Conditioned for Departure of an Alien Temporarily Admitted as a Visitor for Business or Pleasure." The conditions of said instrument pertinent here are set out in the footnote below.[1] The Treasury Bond in dispute.

[1] "Now, Therefore, the conditions of this bond are such that if the said alien is permitted to remain temporarily as a visitor for business or pleasure (or is granted an extension of the period of her admission for such purpose or purposes), and if the said alien shall in all respects, comply with the conditions of her admission (or of the extension of the period of her admission) and shall actually depart permanently from the United States without expense thereto in any event on or before December 8, 1953, or such subsequent date as may be (*sic* by) proper order be fixed in extension of such date and if the immigration officer in charge of the port of Miami and New York shall receive from the above-bounden obligors satisfactory evidence of the time and place of such departure prior to the expiration of thirty (30) days from the date of such departure, then this obligation shall be void; otherwise it shall remain in full force and virtue."

here was at the same time deposited as security to insure the performance of the conditions thereof. The requested time extension was thereafter granted and upon its expiration, a further extension, permitting the alien to remain in this country until March 8, 1954, was granted upon her application.

On January 19, 1954 said Urcella Sibblies stated under oath to an investigating officer of the Service that she had obtained employment and went to work on December 4, 1953 in the home of a private family at Teaneck, New Jersey. An immigration warrant was thereupon issued, charging the alien with a violation of Sec. 241(a)(9) of the Immigration and Nationality Act of 1952 in that she failed to comply with the conditions of her non-immigrant status. (8 U. S. C. A. 1251(a)(9).) On the same day, January 19, 1954, she waived all further proceeding in the matter of her status and was granted the privilege of voluntary departure from the United States to be accomplished by January 30, 1954. On January 29, 1954, the alien voluntarily departed as per the above.

The plaintiff was notified by the District Director by letter of March 10, 1954 as to the breach of the condition of the bond, as above set forth. The plaintiff thereupon demanded the cancellation of the bond described herein and the return of the Treasury bond, posted as security, or its equivalent in cash. The demand was refused and this action, to recover the value thereof, was instituted.

The maintenance of status and timely departure are conjunctive conditions of the bond. The lower court agrees with the decision in *Watzek* v. *U. S.*, 134 F. Supp. 605 to the effect that a violation of the condition as to status, breached the bond here. No contrary contention is advanced upon this appeal. Rather it urged that the statute requires a failure to depart within the allotted time as a prerequisite to forfeiture.

The trial court found that the Service's authority to require a bond under the circumstances here is established by the provisions of 8 U. S. C. A. 1184(a). The provisions

of the statute are then construed as authorizing a bond, recourse to which may be had only in the event the alien fails to depart from the United States on or before the date provided or sooner, if she violated a condition of her admission. In other words, the breach of the condition of admission status may be used to accelerate departure but may not be used as a basis of forfeiture.

The power of the Attorney General to promulgate regulations requiring the posting of a bond by an alien permitted to enter this country is based not only on 8 U. S. C. A. 1184(a), relied upon below, but is broadly expressed in 8 U. S. C. A. 1103(a). Both sections are set out in the footnote below.[2] That regulations have been adopted which authorize bonds conditioned upon the maintenance by the alien of her status as a visitor is not disputed. (8 C. F. R. 214.3 at page 45; 214.2(a)(c) at page 44; 214b.2 at page 48.) It is urged however that such regulations are beyond the power granted in 8 U. S. C. A. 1184(a) and therefore invalid.

The lower court has construed the above section too narrowly. This is particularly true when it is read together with the broad power of regulation granted in Sec.

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[2] "The admission to the United States of any alien as a nonimmigrant shall be for such time and under such conditions as the Attorney General may by regulations prescribe, including when he deems necessary the giving of a bond with sufficient surety in such sum and containing such conditions as the Attorney General shall prescribe, to insure that at the expiration of such time or upon failure to maintain the status under which he was admitted, or to maintain any status subsequently acquired under section 1258 of this title, such alien will depart from the United States." (8 U. S. C. A. 1184(a)).

"He shall establish such regulations; prescribe such forms of bond, reports, entries; and other papers; issue such instructions; and perform such other acts as he deems necessary for carrying out his authority under the provisions of this chapter." (8 U. S. C. A. 1103(a)).

1103(a). Sec. 1184(a), in its prefatory statement, also contains a broad grant of power to regulate, specifically providing for a bond, conditioned upon the alien's departure. Because the power to demand a bond, to insure timely departure, is expressly given by statute does not preclude the exaction of a bond conditioned upon maintenance of status. The statute is inclusive, not exclusive. It follows that the regulations are well within the power granted in either of the above sections. A bond, filed pursuant thereto, is enforceable on the breach of an authorized condition thereof.

We do not need to labor the question further because in any event, under the broad authority granted to regulate the admission of non-immigrants, the exaction of the bond was within the powers inherent in the grant even in the absence of express statutory authority. The bond here, being neither unlawful nor prohibited, is entirely valid and enforceable. (*United States v. Wolper*, 2 Cir., 86 F. 2d 715, and cases cited therein.)

The contention is made that since the alien departed without expense to the United States that no damage has been suffered. A bond, providing for liquidated damages, is particularly appropriate under the facts shown, to compensate for the indirect damage done to the national economy, the expense of investigation and the maintenance of an agency to enforce the provision of the Immigration Laws. The decision in *United States* v. *Goldberg*, 40 F. 2d 406, 2d Cir. settles the question of the propriety of liquidated damage here.

The judgment below is reversed and the case is remanded to dismiss the complaint.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

STANLEY G. EARLE,
Plaintiff,

against

UNITED STATES OF AMERICA,
Defendant.

Civ. 14776

APPEARANCES:

SPAR, SCHLEM & BURROUGHS, Esqs.,
By CHARLES SPAR, Esq., of Counsel, Attorneys for the Plaintiff,

LEONARD P. MOORE, Esq., U. S. Attorney,
By NICHOLAS COFFINAS, Esq., Assistant U. S. Attorney, of Counsel, Attorney for the Defendant.

RAYFIEL, J.

This is an action under section 1346(a) (12) of Title 28, U. S. Code, for the recovery of the proceeds of a United States Treasury Bond in the amount of $500.00, and has been submitted for determination on the following agreed statement of facts:

The bond was posted by the plaintiff on May 28, 1953 in behalf of one Ureella Sibblies, an alien, who had been admitted into the United States at the Port of Miami, Florida, on June 8, 1952 for a period of six months, pursuant to the provisions of Section 3(2) of the Immigration Act of 1924, as amended, as a visitor for pleasure and medical treatment.

Thereafter, on three occasions, the said alien applied for and obtained extensions of stay to remain temporarily in the United States, the first until June 8, 1953, the second until December 8, 1953 and the third until March 8, 1954.

The said Service, as a condition of the granting of the second extension, required that the alien post with it a bond in the principal sum of $500.00, conditioned for her departure from the United States within the time allotted to her, and also for her compliance with the conditions of her admission into the United States.

On May 28, 1953 the plaintiff duly posted a United States Treasury Bond in the principal sum of $500.00, and executed an agreement or form prepared by the Service, entitled "Bond Conditioned for Departure of an Alien Temporarily Admitted as a Visitor for Business or Pleasure."

The said bond contained, among others, the following provisos:

> "NOW THEREFORE, the conditions of this bond are such that if the said alien is permitted to remain temporarily as a visitor for business or pleasure (or is granted an extension of the period of her admission for such purpose or purposes), and if the said alien shall in all respects, comply with the conditions of her admission (or of the extension of the period of her admission) and shall actually depart permanently from the United States without expense thereto in any event on or before December 8, 1953, or such subsequent date as may be (sic by) proper order be fixed in extension of such date and if the immigration officer in charge of the port of Miami and New York shall receive from the above-bounden obligors satisfactory evidence of the time and place of such departure prior to the expiration of thirty (30) days from the date of such departure; then this obligation shall be void; otherwise, it shall remain in full force and virtue."
>
> * * * * * * *
>
> "It is specially stipulated and agreed that by the obligors hereto and each of them that, if the appropriate officers of the United States Immigration and Naturalization Service shall authorize an extension of time within which the alien is required to depart from the United States, notice of such authorization is hereby waived, and no authorization of such extension, with or without notice to the said obligors, shall in any way diminish or extinguish the obligation hereunder of the said obligors."

On May 28, 1953, upon the deposit of the said bond and the execution of said agreement or form, the said alien was granted permission to remain in the United States until December 8, 1953, which period was, on application of the alien, further extended to March 8, 1954.

On January 19, 1954 the said alien made a voluntary statement, under oath, to an investigating officer of the Service, which included the following questions and answers:

> "Q. Are you employed? If so, where?
> A. Yes. By Mr. and Mrs. S. Silverstein, 140 Norma Road, Teaneck, New Jersey.
> Q. When did you gain employment after your entry into the United States?
> A. I went to work for Mr. and Mrs. S. Silverstein, 140 Norma Road, Teaneck, New Jersey, about December 4, 1953."

On January 19, 1954 an Immigration Warrant of Arrest was issued on a charge that the alien had violated Section 241(a)(9) of the Immigration and Nationality Act of 1952 in that she had failed to comply with the conditions of her status as a non-immigrant, to wit, as a visitor for pleasure under Section 3(2) of the Immigration Act of 1924.

On January 19, 1954 the alien waived all further proceedings, and was granted the privilege of voluntary departure from the United States, to be effected not later than January 30, 1954.

On January 29, 1954 the alien, without expense to the Government, voluntarily departed from the United States from the port of Miami, Florida.

On March 10, 1954, in a letter of which the following is a copy, the District Director of the Immigration and Naturalization Service informed the plaintiff that the condition of the aforementioned departure bond had been violated.

"RE: URCELLA SIBBLIES

Sir or Madam:

You are hereby notified that the condition of the $500.00 departure bond dated May 28, 1953, on which you are an obligor with respect to the above-named, has been violated. It has been concluded that the bond executed by you has been breached for the following reasons: subject arrived in the United States at Miami, Florida on June 8, 1952 and was admitted as a visitor. After a $500.00 departure bond was posted in her behalf on May 28, 1953 she received an extension of stay until December 8, 1953. She received a further extension of stay under bond until March 8, 1954. The subject breached the terms of the bond by accepting employment on December 4, 1953. A Warrant of Arrest was issued in her case on January 19, 1954. She was subsequently granted the privilege of voluntary departure and departed from the United States from Miami, Florida on January 29, 1954; but this did not negate the previous breach of the terms of the bond by her acceptance of employment on December 4, 1953.

Very truly yours,

(SIGNED)

EDW. J. SHAUGHNESSY

Edw. J. Shaughnessy
District Director
New York District"

Plaintiff has duly demanded that the said departure bond be cancelled and that the United States Treasury bond deposited with the Service, or its equivalent in cash, be returned to him but the defendant has refused to comply with said demand.

The foregoing constitutes the entire statement of facts on which this action has been submitted for determination.

The language of the departure bond appears to be clear and unequivocal. It provides that the conditions to be

performed in order to void obligation thereunder are conjunctive, that is to say, that the alien was required not only to comply with the conditions of her admission but also to make her departure from the United States not later than the date therein provided for, or any extensions thereof.

In support of its contention the Government has cited the case of *Watzek* vs. *United States*, 134 F. Supp. 605, involving similar facts, which Judge Palmieri decided in favor of the Government, declaring forfeit the bond posted therein.

The bond in the *Watzek* case appears to have been similar in form and content with that in the instant case, and I am in agreement with Judge Palmieri's interpretation thereof. But did the service have the authority to exact a bond providing for forfeiture even if the alien voluntarily departed from the United States prior to the date fixed therein? That question was not raised in the *Watzek* case.

The Service's authority to require a bond for the admission of the said alien into the United States as a non-immigrant visitor was established by Section 1184(a) of Title 8, U. S. Code, which reads as follows:

> "The admission to the United States of any alien as a nonimmigrant shall be for such time and under such conditions as the Attorney General may by regulations prescribe, including when he deems necessary the giving of a bond with sufficient surety in such sum and containing such conditions as the Attorney General shall prescribe, to insure that at the expiration of such time *or upon failure to maintain the status under which he was admitted*, or to maintain any status subsequently acquired under Section 1258 of this title, such alien will *depart from the United States*." (Emphasis added)

There is no doubt, of course, that the Attorney General had the right to prescribe by regulation that a bond be filed,

and that it contain provisions requring the alien to comply with certain conditions. But does not Section 1184(a), *supra*, limit that right or authority to such conditions as may be necessary to insure the alien's departure? I believe it does. It is my opinion that the right to prescribe the condition represented by the underscored words in the following quoted portion of the statute: "insure that at the expiration of such time *or upon failure to maintain the status under which he was admitted . . . such alien will depart from the United States,*" was intended to confer upon the Service no greater right or power than to accelerate the alien's departure because of her failure to maintain the status under which she was admitted.

It may be added that the bond on its face is characterized as a "Bond conditional for departure of an alien temporarily admitted as a visitor for business or pleasure." It is my opinion that recourse may be had to the bond only if the alien failed to depart from the United States on or before the date provided therein for her departure, or sooner if she violated a condition of her admission, and then only if the Government actually sustained any loss or damage by reason of her failure so to do. The provision for liquidated damages merely relieved the Government of the necessity of establishing the extent of its damage. Here, however, the alien left voluntarily at her own expense.

Accordingly judgment is granted in favor of the plaintiff for the relief prayed for in the complaint.

Submit proposed decree on notice.

(SIGNED)
RAYFIEL
United States District Judge

Dated: February 14, 1957.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

STANLEY G. EARLE, Plaintiff, *against* UNITED STATES OF AMERICA, Defendant.	Civ. 14776

The plaintiff commenced this action under § 1346(a)(12) of Title 28, U. S. Code, to recover the proceeds of a U. S. Treasury Department Bond of $500 deposited with the defendant as security. The matter was submitted to the court on an agreed statement of facts, set forth at length in my decision herein, filed on February 14, 1957, wherein I granted judgment in favor of the plaintiff. Pursuant to the direction contained in said decision, notice of the submission of judgment thereon on March 22, 1957 was duly served upon the United States Attorney for the Eastern District of New York and on March 25, 1957 judgment was duly entered in the office of the Clerk of this Court in favor of the plaintiff against the defendant.

On April 4, 1957 the said United States Attorney caused to be served upon the attorneys for the plaintiff a notice of motion, returnable April 12, 1957 for "reconsideration of a decision granting judgment to the plaintiff, etc."

I find no authority in the Federal Rules for the procedure adopted by the defendant. The application appears to be in the nature of a request for leave to reargue, as if the matter before this court had been a motion. If that be so, then the Government's application was not made within the 14 day period prescribed by Rule 9(b) of the General Rules of the United States District Court, for the Eastern District of New York.

However, the matter presented to the court was, as hereinabove stated, a *trial* submitted on an agreed statement of facts, and a formal judgment was entered herein. That being so, the defendant's remedy, if it sought reconsideration of the decision, was an application under Rule 59 of the Federal Rules of Civil Procedure for a new trial. But the remedy was no longer available since Rule 59(b) of said Rules requires an application therefor to be made within ten days after the entry of judgment.

But there is still another reason why this court can give no consideration to the defendant's motion. On May 15th and May 16th, 1957, respectively, the defendant filed notices of appeal from the aforementioned decision and judgment in the office of the Clerk of this Court. Hence, I have no further jurisdiction in the matter.

Accordingly, the motion is denied.

Dated: June 25, 1957.

(SIGNED)
RAYFIEL,
United States District Judge.